

FEDERAL COMMUNICATIONS COMMISSION

ORIGINAL

In Re Applications of:	)	WT DOCKET No.:	97-199
)		
WESTEL SAMOA, INC.	)	File No.:	00560-CW-L-96
)		
For Broadband Block C	)	File Nos.:	00129-CW-L-97
Personal Communications	)		00862-CW-L-97
Systems Facilities	)		00863-CW-L-97
	)		00864-CW-L-97
and	)		00865-CW-L-97
	)		00866-CW-L-97
WESTEL, L.P.)		
)		
For Broadband Block F Personal			
Communications Systems Facilities			

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Before the
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Washington, D.C. 20554

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For Broadband Block F Personal
Communications Systems Facilities

Suite 201
FCC Building
2000 L Street, N.W.
Washington, D.C.

Tuesday
March 24, 1998

The parties met, pursuant to the notice of the
Judge, at 9:30 a.m.

BEFORE: HON. Judge Steinberg
Administrative Law Judge

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and Quentin L. Breen

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P R O C E E D I N G S

JUDGE STEINBERG: On the record. Okay. We're on the record now.

This is a further prehearing conference in WT docket, number 97-199 by Memorandum Opinion and Order, FCC 98-31, released March 10, 1998. The Commission modified issue one in this proceeding and afforded Anthony T. Easton the opportunity to file a notice of appearance.

By order FCC 98M-31 released March 12, 1998, I scheduled this prehearing conference. In that order I also directed counsel for ClearComm to attend. I didn't know if I had the authority to do it, but I thought I'd do it anyway. And I see you're here, so I must have the authority.

MR. PETTIT: As far as we're concerned, you do, your Honor.

JUDGE STEINBERG: Thank you. I'll note that Mr. Easton filed his notice of appearance on March 12. And as I've said before, counsel for ClearComm is present this morning.

Let me take the appearances first. For Westel Samoa, Inc., Westel, L.P. and Quentin L. Breen.

MR. CARROCCIO: Thomas Carroccio of Bell, Boyd and Lloyd.

JUDGE STEINBERG: For Anthony T. Easton.

MR. LUKAS: Russell Lukas of Lukas, Nace, Gutierrez and Sachs.

1 JUDGE STEINBERG: I'm kind of disappointed that Mr.
2 Lyon isn't here because I was looking forward to seeing him.
3 I'm sure we'll all see a lot more of him in the future --

4 MR. LUKAS: I think you will.

5 JUDGE STEINBERG: -- which is an editorial comment on
6 my part. For the chief Wireless Telecommunications Bureau?

7 MS. POWER: Katherine Power.

8 JUDGE STEINBERG: And?

9 MS. CONRAD: Lynette Conrad.

10 JUDGE STEINBERG: Okay. And let me just -- for
11 ClearComm, Inc.

12 MR. PETTIT: Robert Pettit, Richard Gordin and Brian
13 Tramont from Wiley, Rein and Fielding.

14 JUDGE STEINBERG: Okay. Which is which?

15 MR. PETTIT: Pettit, Gordin, Tramont.

16 JUDGE STEINBERG: Thank you. Okay.

17 The first thing I want to do this morning is, on my
18 own motion, revisit ClearComm's petition to intervene. And I'm
19 going to reconsider that the ruling I made in Memorandum Opinion
20 and Order, FCC 98M-3, which was released on January 16, 1998.
21 In that ruling I denied a petition to intervene which was filed
22 by ClearComm on November 13, 1997.

23 In light of the Commission's modification of issue
24 one, the Commission's language concerning a notice of apparent
25 liability issued against PCS 2000, which was ClearComm's

1 predecessor -- and I'm specifically referring to language in --
2 at paragraphs 13 and 14 of FCC 98-31. In the filing of a notice
3 of appearance by Mr. Easton, it appears that this hearing now
4 has potential to affect ClearComm's standing before the
5 Commission and perhaps some of the conclusions reached in the
6 NAL.

7 Under these circumstances, which certainly have
8 changed since my ruling was issued, I will now grant ClearComm's
9 November 13, 1997 petition to intervene and give ClearComm party
10 status in this proceeding. I'm going to issue an order
11 confirming the rulings I make this morning. And in that order,
12 I'm going to ask ClearComm to formally file a notice of
13 appearance within 10 days of the release of that order. That
14 will put everybody, particularly somebody over in what we used
15 to call dockets -- I don't know what they're called anymore,
16 today -- notice that you're a party, and you should be receiving
17 copies of orders automatically if you're not already doing so.

18 Anybody have any comment on that? Another editorial,
19 I don't know why in the world you want to be part of this case.
20 I would think you'd, you know, just live with the NAL which has
21 become final, and -- that's your business, end of editorial.

22 The next thing that I would like to do is --

23 MR. PETTIT: Your Honor, could I just raise one thing,
24 if I may?

25 JUDGE STEINBERG: Yes, sir.

1 MR. PETTIT: We have a pending application for review
2 at the Commission of our original motion. I'm not -- I'm not
3 quite sure of what to do about that. I guess --

4 JUDGE STEINBERG: Oh, I'll take --

5 MR. PETTIT: -- we could go ahead and withdraw that
6 and --

7 JUDGE STEINBERG: I'll -- we know about all that. And
8 I assume that will be dismissed as moot. I will notify the
9 people that are responsible for that of what my action is, and
10 they will see the order. And they will do whatever they want to
11 do with it, which I suspect -- I suspect they'll dismiss it.

12 MR. PETTIT: Thank you.

13 JUDGE STEINBERG: What is happening with the motion to
14 consolidate I don't know. Mr. Easton filed a motion to
15 consolidate which is pending up at the Commission. That, I
16 don't know what's going on with. And I -- I don't want to ask.

17 The second thing I want to do this morning is rule on
18 a joint motion for protective order which was filed on December
19 23, 1997 by a third party witness, Javier Lamoso. And I
20 apologize if I mispronounced any of that.

21 MR. PETTIT: It's actually Javier.

22 JUDGE STEINBERG: Javier?

23 MR. PETTIT: Uh-hum.

24 JUDGE STEINBERG: Okay. Filed by Javier Lamoso,
25 ClearComm, the Wireless Bureau and Westel. I've been

1 specifically sitting on the order, not doing anything with it,
2 because it appears everybody's agreed as to the -- as to what to
3 do with certain materials that -- certain of the discovery -- of
4 the discovery materials. And I didn't see any need for me to
5 intervene before I had to. And what I was going to do was take
6 it up on the first day of the hearing, but we never had the
7 hearing. So I -- so I figure now is a good time to take it up.

8 The moving parties seek the entry of a protective
9 order to regulate the use and disclosure of certain discovery
10 materials obtained from ClearComm and Mr. Lamoso. The specific
11 materials sought to be covered are listed in footnote one of the
12 motion. I alerted Mr. Lukas of the pendency of this motion, and
13 I -- and I presume you got a copy of it, Mr. Lukas?

14 MR. LUKAS: I did, your Honor.

15 JUDGE STEINBERG: Okay. Have you had an adequate
16 opportunity to review it?

17 MR. LUKAS: Yes, I have. And Mr. Easton would object
18 to the grant of the protective order.

19 JUDGE STEINBERG: Okay. To -- to what extent?

20 MR. LUKAS: Obviously this motion does not set forth
21 any good cause for the issuance of a protective order.

22 Apparently the parties have agreed that they think it's -- the
23 material should be treated as confidential, but they certainly
24 haven't put it on the record. I believe that --

25 JUDGE STEINBERG: You mean as to why the information

1 is confidential?

2 MR. LUKAS: Right. Right. I believe that any
3 protective order which restricts the dissemination of materials
4 gained in discovery does, at least, implicate the first
5 amendment. I think the parties should be -- should disclose
6 precise reasons for that type of order. They haven't done it so
7 far. So I would suggest that it either be granted or held in
8 abeyance and let them amend their motion.

9 JUDGE STEINBERG: Okay. Have you seen any of the
10 materials?

11 MR. LUKAS: No, I have not.

12 JUDGE STEINBERG: Okay. Why don't we -- do you want
13 to comment, Mr. Carroccio?

14 MR. CARROCCIO: I would, your Honor. I would suggest
15 that you hold in abeyance a ruling on this, because that motion
16 was filed at the time that Mr. Easton was not a party.

17 JUDGE STEINBERG: Right.

18 MR. CARROCCIO: And we agreed among ourselves as to
19 what we thought was appropriate. I think that possibly the same
20 objective could be obtained through negotiation with
21 Mr. Easton's counsel now that he is on board and that might
22 obviate the need for a ruling at this time. I think that's the
23 more efficient way to move at this time.

24 JUDGE STEINBERG: Okay. Mr. Pettit?

25 MR. PETTIT: I think that's an excellent suggestion,

1 your Honor. I'm sorry. I didn't realize this was going to be
2 taken up this morning, but we would certainly appreciate the
3 chance to do that or to perhaps amend the request in some way.

4 JUDGE STEINBERG: Okay. Do you want -- do you want
5 to comment?

6 MS. POWER: I have no further comments.

7 JUDGE STEINBERG: Okay. What -- what I'll do is I'll
8 adopt your suggestion, Mr. Carroccio and just hold the ruling in
9 abeyance. Until -- well, yeah. I won't say anymore and see
10 if -- see if you all could work something out. The one thing --
11 I should say on the record the one thing that bothered me about
12 the joint motion was -- was the treatment of the material once
13 we got to hearing, because I have a very difficult time
14 conceptualizing how I would write a decision and have some of it
15 under seal and some of it not under seal. And I don't -- I
16 don't want to do that.

17 I reviewed all the exhibits that came in from the
18 Bureau and from -- and from Westel, and I didn't see anything in
19 there that -- that concerned any of this confidential material.
20 And, you know, maybe that's the ultimate way that it will -- it
21 will resolve itself -- is that -- is that nothing will come out
22 at the hearing. But, you know, let's if you can work something
23 out among yourselves with -- with my reservation in mind.

24 Because I would think that when it comes to the
25 hearing, that everything would be on the record and let the

1 chips fall where they may and same thing with findings and
2 conclusions and -- and a decision, although there may be a way
3 of camouflaging, you know, names and dates and whatever. But I
4 don't know how I would issue a decision with -- with some of
5 it -- the decision under seal or part of it under seal. It
6 doesn't make any sense to me, but that's my thoughts.

7 Okay. The next thing is a motion for summary decision
8 which was filed on January 21, 1998 by Westel and Mr. Breen. An
9 opposition was filed by the Wireless Bureau on February 4, 1998.
10 Westel and Mr. Breen seek summary decision of issues two and
11 three. These issues were specified to inquire into the conduct
12 of Mr. Breen in connection with certain bids placed in a
13 commission auction to determine -- let me start that again.

14 These issues were specified to inquire into the
15 conduct of Mr. Breen in connection with certain bids placed in
16 the Commission auction to determine whether Mr. Breen engaged in
17 a misrepresentation or a lack of candor and to determine whether
18 Westel is qualified to be a commission licensee. And by
19 extension if Westel is qualified, then Mr. Breen would be
20 qualified, which was a subject of a petition to enlarge that I
21 denied.

22 I'm going to deny the motion for summary decision.
23 Summary decision is appropriate only where the truth is clear,
24 the basic facts are undisputed and the parties are not in
25 disagreement regarding the material factual inferences that may

1 be properly drawn from such facts. And I will cite Big Country
2 Radio, Inc., 50 FCC 2d 967 at 968, which was a 1975 review board
3 case.

4 In addition, when an issue requires a determination of
5 an individual's state of mind, it is unusual that this position
6 may be made by summary decision. And for that, I'll cite
7 Consolidated Electric Company vs. United States, 355 F2d 437 at
8 438 and 439, which is a 1966 Ninth Circuit case.

9 Here, as Westel's motion and the Bureau's opposition
10 made clear, the basic facts are not undisputed and a resolution
11 of issues two and three may involve a determination regarding
12 Mr. Breen's state of mind. Under these circumstances, summary
13 decision is not warranted. Okay. Any questions about that?

14 (No response.)

15 JUDGE STEINBERG: Let's turn to discovery. We've had
16 a considerable amount of discovery in this case already.

17 MR. CARROCCIO: Excuse me, your Honor.

18 JUDGE STEINBERG: Yes, sir.

19 MR. CARROCCIO: Before we get to discovery, I'd like
20 to raise a couple of procedural questions. We view the MO&O of
21 March 10 as amending the hearing designation order and
22 therefore, requiring further publication in the Federal Register
23 under Section 309 of the Act. That publication has not taken
24 place yet.

25 JUDGE STEINBERG: Okay. I don't know.

1 MR. CARROCCIO: The publication in the Federal
2 Register triggers other procedural dates, including
3 opportunities to intervene and petitions to enlarge or otherwise
4 modify the issues. We also have an additional party being
5 added, and there would be time for enlargement of issues with
6 regard to that party or addition of issues with regard to that
7 party.

8 I don't know if there are any parties, other parties,
9 planning to attempt entry into this proceeding. But I can
10 envision at least one other party that might seek to do so and
11 may very well be able to make a case for participation on the
12 same basis as ClearComm.

13 JUDGE STEINBERG: Could that be -- could that be
14 Romulus?

15 MR. CARROCCIO: No, it would not, your Honor.

16 JUDGE STEINBERG: No? Do you want to tell us?

17 MR. CARROCCIO: I would -- I would see possibly the --
18 I hope I get the right title here. I believe it's the -- what
19 everybody refers to as the S.D.E. Trust, the Susan D. Easton
20 Trust.

21 JUDGE STEINBERG: Well, that's somebody else's
22 bailiwick.

23 MR. CARROCCIO: Your Honor, it's not known to me as to
24 whether or not there's going to be an attempted intervention.
25 And we have -- we are now back here today because of these very

1 sort of procedural questions that we proceeded with the
2 assumption that we knew our parties. We knew the basis for
3 going forward. And while we are reluctant to delay this
4 proceeding one minute -- much less one week or anything else --
5 not having a Federal Register date in this proceeding, we think,
6 is -- leaves us vulnerable to disruption of any procedural
7 schedule we might set today.

8 We really looked at this recently and have just come
9 to this conclusion. And we're very concerned about it, and we'd
10 like to put that on the table right now.

11 JUDGE STEINBERG: Okay. Do you want to comment,
12 Mr. Lukas?

13 MR. LUKAS: I represent Mr. Easton, not S.D.E Trust.
14 It's represented by Mr. Tanke in California. I can tell your
15 Honor that I apprised them of the issuance of the MO&O, and I
16 also advised them of their rights as far as I know. I probably
17 wouldn't know what decision they're going to make, but they're
18 aware of the situation. And what Mr. Tanke decides to do is up
19 to him.

20 JUDGE STEINBERG: Mr. Pettit, do you want to comment?

21 MR. PETTIT: I -- I guess I don't understand why
22 this -- the Commission's most recent order would be an amendment
23 of the original hearing designation. We have the same two
24 parties. It's quite obvious the Commission has clarified what
25 happened at the hearing to some extent. If the parties are the

1 same, it strikes me that it does not work an amendment of the
2 hearing designation order. But that's off the top of my head,
3 without any benefit of research or further thought about it.

4 JUDGE STEINBERG: Miss Conrad?

5 MS. POWER: Oh --

6 JUDGE STEINBERG: No, you're Miss Conrad.

7 MS. POWER: No. I'm Katherine Power.

8 JUDGE STEINBERG: I thought you were Katherine Power.
9 What is -- what is -- you know, let's just go off the record.
10 (Off the record.)

11 JUDGE STEINBERG: On the record. Okay. While we were
12 off the record, I've apologized to Miss Power because I
13 was -- I was very confused as to the identity of the two Bureau
14 people that were here, and I do apologize. And I'm sorry --

15 MS. POWER: That's quite all right, your Honor.

16 JUDGE STEINBERG: -- for the confusion --

17 MS. POWER: No problem.

18 JUDGE STEINBERG: -- which is in my head. Okay. So
19 you have no comment or --

20 MS. POWER: Well, I -- Mr. Carroccio raised the issue
21 with me yesterday, and I put in a -- a note to the OGC to -- you
22 know, procedural matter -- to try to get to the bottom of this,
23 because I frankly can't answer it, whether it is something that
24 should be in the Federal Register or not. And I think it's a
25 good question, and I will try to get it resolved with the help

1 of the General Counsel's office.

2 JUDGE STEINBERG: Okay. Well, I'm going to resolve it
3 now and say there's no -- there's no Federal Register
4 publication required under -- under one point, it is a
5 modification of the issue. And in uncounted numbers of cases
6 judges are asked to modify the issues in FCC proceedings.
7 Sometimes they do; sometimes they don't. Sometimes they do it
8 formally in writing; sometimes they do it orally on the basis of
9 a motion. And I've never -- I've never seen republication in
10 the Federal Register required after an action like that. Same
11 thing, petitioner's intervenor granted; petitioner's intervenor
12 denied. Parties are added. And I've never seen republication
13 required by something like the addition of a party. Certainly
14 had I granted -- certainly had -- well, I'm not going to say
15 certainly. Well, certainly had I granted the petition to
16 intervene when Mr. Pettit thinks I should have, it would not
17 have required republication. Section 1.229 of the Rules
18 governing enlargement of the issues talks about -- if my memory
19 is correct -- I haven't read the Rule in ages; but if my memory
20 is correct, talks about time periods for when issues -- for when
21 petitions must be submitted after modification of the issues.

22 And I think it's -- it's 15 days whereby -- it's 1.229
23 of the FCC rules. It talks about adding issues after
24 modification of the issues, I think.

25 MR. LUKAS: Your Honor?

1 JUDGE STEINBERG: Yeah.

2 MR. LUKAS: I did look into this a little bit.

3 JUDGE STEINBERG: So you have -- you have cases?

4 MR. LUKAS: I have the APA which, I think, two of the
5 three criteria that's supposed to be given -- two of the three
6 facts have to be given for APA notices that jurisdiction and the
7 authority under which the agency acts; and number two, the
8 nature of the matters at issue.

9 JUDGE STEINBERG: Oh, so you're saying the
10 jurisdiction change --

11 MR. LUKAS: Yes. This is -- this is a very unusual
12 designation order. I've never seen a designation order reversed
13 on jurisdictional grounds; and so I would submit to you, your
14 Honor, this is an unusual case. I think a good argument could
15 be made that it should be republished.

16 JUDGE STEINBERG: Well, I'll tell you what I'm going
17 to do. I'm going to set dates this morning; and if it's
18 republished, fine. And if it's not republished, fine. But
19 we're going to set dates for -- for everything. And if we have
20 to put them off, we'll put them off. Meanwhile, you're all
21 going to move on discovery because you might not get additional
22 time for discovery, even if it is published, because I don't see
23 -- I don't see what difference it makes.

24 I mean at this -- well, yeah. I really don't see what
25 difference it makes whether its published or -- and if somebody

1 wants to petition to intervene, let them petition to intervene.
2 And if it's -- if it's -- if it's outside the publication
3 period, you know, we'll just face that when we come to it. If
4 somebody wants to -- if it's never republished and they don't
5 file a petition to intervene within a certain period of time,
6 then their petition is going to be considered not timely filed.

7 If it is republished and they wait the 30 days, then
8 it is timely filed. I mean, I don't see much point in delaying
9 this especially since nobody really knows. And it's not my --
10 it's not within my authority to publish or not publish. That's
11 somebody else's bailiwick.

12 Yes, sir?

13 MR. CARROCCIO: Your Honor, the reason I raised the
14 question is that the language of 309 is pretty clear about
15 amendments to the issues requiring -- seeming to require
16 publication.

17 JUDGE STEINBERG: Do you have the language in front of
18 you? I don't.

19 MR. CARROCCIO: I do not have it with me, your Honor.
20 I'm sorry. But the order, the MO&O -- the MO&O is also pretty
21 clear that they didn't talk about modifying issues here. They
22 talk about the HDO. I'm reading from -- looking at paragraph
23 19.

24 JUDGE STEINBERG: Well, look at paragraph one. See
25 the word "modifies" in there?

1 MR. CARROCCIO: But the ordering clause is, your
2 Honor, used specifically 19 --

3 JUDGE STEINBERG: Well --

4 MR. CARROCCIO: -- paragraph 19 specifically uses the
5 word "amended" both with regard to the hearing designation order
6 and as to issue one. That's my concern. And --

7 JUDGE STEINBERG: Well, what's the difference between
8 amended and modified? Does Mr. Lukas have a dictionary in his
9 briefcase?

10 MR. LUKAS: I forgot it this morning, your Honor.

11 MR. CARROCCIO: Where is it?

12 MR. PETTIT: Had we known about the issue, we would
13 have brought one, your Honor, I suppose.

14 JUDGE STEINBERG: Because I can go to my office and
15 get one, but it's more fun arguing about it than actually
16 finding out the answer.

17 MR. PETTIT: Your Honor, as a practical matter, had
18 the General Counsel's office or the Commission intended to --
19 that this work or require some republication, they would have
20 said so in the order. And I suspect that may be what we find
21 out from Miss Power's inquiry to them.

22 MS. POWER: Mr. Riffer.

23 MR. CARROCCIO: Your Honor, I'm just concerned that
24 we're going to get caught in a procedural backlash here.

25 JUDGE STEINBERG: Well, if we do, we do. I don't

1 think -- I'm prepared here to set dates, and then we'll see what
2 happens. If people want to file stuff, let them file stuff.
3 And then everyone else will make the arguments as to whether
4 it's timely or not timely; whether it has to be published or not
5 published. But it seems like what we're doing is we're avoiding
6 trial of the issues. And I think the sooner we get down to the
7 trial of the issues, your clients will get their days in court,
8 which is what they've wanted from the beginning.

9 MR. CARROCCIO: Your Honor, we are very anxious to get
10 to hearing. We're just not anxious to incur another delay
11 because of a procedural misstep.

12 JUDGE STEINBERG: Well, whether the delay occurs now
13 or whether the delay occurs a month from now -- if there's a
14 delay, there will be a delay.

15 MR. CARROCCIO: Your Honor --

16 JUDGE STEINBERG: If no delay occurs, then we're ready
17 to go.

18 MR. CARROCCIO: Your Honor, my concern is the
19 possibility of additional parties. And I'm -- I'm --

20 JUDGE STEINBERG: Well --

21 MR. CARROCCIO: That's the -- we -- we have gone
22 through extensive discovery, as you're well aware. And I don't
23 know what position Mr. Easton's counsel is going to take on that
24 discovery, but Mr. Easton did not participate in it. ClearComm
25 did not participate in it. And at that time the only parties to

1 this proceeding were the Westel parties and the Bureau. And we
2 have a question as to how that's going to affect -- are we going
3 to have to start discovery all over again?

4 And if so, if we're looking at another party coming
5 into this or the potential for another party coming into this --
6 and I was hoping maybe some people today would know where this
7 would be, because I can assure you that there are no other
8 Westel related parties coming in -- I don't want to have to
9 start discovery a third time. And that's the thing that bothers
10 me at this point, and that's -- it's something that we've really
11 only focused on in basically over the past weekend, your Honor.
12 And we're very concerned about it at this point.

13 JUDGE STEINBERG: Okay. Well, then let's talk about
14 discovery. Let me ask you if -- if counsel for Mr. Easton or
15 counsel for ClearComm has reviewed or has gotten access to any
16 of the discovery which has taken place up to date?

17 MR. PETTIT: I know that we have the transcripts from
18 the depositions, and I believe all of them now, your Honor.

19 JUDGE STEINBERG: Okay. Mr. Lukas?

20 MR. LUKAS: I believe the same is the case with us,
21 but we do not have copies of admissions, stipulations. We don't
22 have the direct case of the Bureau, which we'd like to see.

23 JUDGE STEINBERG: Okay.

24 MR. LUKAS: I'd like the opportunity to meet with
25 counsel for the Bureau or Mr. Carroccio and review my file as

1 compared to theirs.

2 JUDGE STEINBERG: Okay. Now I assume that Mr. Easton
3 wants -- wants discovery.

4 MR. LUKAS: That is correct, your Honor.

5 JUDGE STEINBERG: And I assume that ClearComm wants
6 discovery?

7 MR. PETTIT: Yes, your Honor.

8 JUDGE STEINBERG: Okay. And I'm going to give you the
9 opportunity to -- to -- to do discovery. The first thing I'm
10 going to do is -- there was a Freedom of Information Act request
11 by Westel against the Wireless Bureau on -- I guess filed the
12 16th of October of last year. There was a request for
13 admissions of fact by the Wireless Bureau -- against the
14 Wireless Bureau -- filed by Westel on the 20th of October of
15 last year. And there was a request for production of documents
16 by the Wireless Bureau against Westel, which was made or filed
17 October 31 of last year.

18 All of that stuff has been done. And what I'm going
19 to require is that whatever documents Westel turned over to the
20 Bureau, whatever documents the Bureau turned over to Westel, you
21 make copies of them and give to ClearComm and give them to Mr.
22 Easton. So that way at least everybody's got the same --
23 everybody's starting with -- everybody's got the deposition
24 transcripts. Everybody's got the same documents.

25 Now how all this works -- whether you make copies,

1 whether the Wireless Bureau makes copies for ClearComm or
2 whether you give them -- or whether you give ClearComm the
3 documents, and they make their own copies, who pays for what --
4 I don't know. But you all can work that out.

5 If there are additional requests for documents,
6 additional Freedom of Information Act requests, start fresh.
7 Basically, I want you to turn over those documents by April 1,
8 1998, if you can do that. I mean, that -- is that too short a
9 period of time?

10 MR. CARROCCIO: Your Honor, to be fair to all the
11 parties involved in this, I think you should be aware of how we
12 handle things with the Bureau.

13 JUDGE STEINBERG: Okay.

14 MR. CARROCCIO: We made a number of documents
15 available for their review, and they extracted and asked us to
16 make copies of particular documents they thought to be
17 particularly relevant. I do not know the status of the original
18 presentation to the Bureau. I -- I think we probably have made
19 copies of what we actually delivered to the Bureau, not what
20 they reviewed.

21 But in fairness to the other parties, I believe they
22 should have the same opportunity for review of the larger group
23 of documents. And I'm not -- Mr. Breen is traveling right now.
24 The other attorney in our office working on this case is
25 traveling right now, and a week is pushing me just a bit, your

1 Honor.

2 JUDGE STEINBERG: Okay.

3 MR. CARROCCIO: And I would really like to give
4 everybody the same fair opportunity that --

5 JUDGE STEINBERG: Oh, I agree.

6 MR. CARROCCIO: -- the Bureau had to begin with.

7 JUDGE STEINBERG: I agree. Okay. Well, how about the
8 8th of April? That gives you an extra week.

9 MR. CARROCCIO: That would be fine, your Honor.

10 JUDGE STEINBERG: Is that -- Miss Power, does that
11 date agree with you?

12 MS. POWER: That shouldn't be a problem, your Honor.

13 JUDGE STEINBERG: Okay. And the sooner you get this
14 stuff to the other parties, the better. Okay. So -- so
15 basically everybody will be starting with the same material. If
16 there's additional material, additional documents that you want
17 to request, then you file your -- file a request for -- for
18 production of documents. Try not to duplicate anything, because
19 that's just a waste of everybody's time. Just look at the --
20 look at the documents, analyze them, see if there are other
21 documents that you might want to request and request the
22 additional documents.

23 Anybody have any problem with that? Okay. I don't
24 hear any response; so I assume nobody has thought of any
25 problems yet.

1 MR. CARROCCIO: Your Honor -- your Honor, we do have
2 an additional issue at this time that we did not have
3 previously.

4 JUDGE STEINBERG: Well, that's why I'm saying start --
5 you know, on that you start fresh. But, again, to the -- when
6 you've reviewed the documents that -- when ClearComm and Mr.
7 Easton review the documents, you keep in mind that these things
8 may overlap with issue one. And if you've got something under
9 issues two and three that's relevant to issue one, you don't
10 have to ask for it again. So -- and then, you know, obviously
11 Mr. Easton is going to be hit with a lot of requests for
12 documents. ClearComm might be, too. I just want to eliminate
13 or minimize the duplication.

14 Now a lot of depositions were taken, and I have a list
15 of the people that I think were deposed, at least to the best of
16 my knowledge -- at least to the best of my information. There
17 might be other people that I just overlooked or -- I don't think
18 there was anybody I didn't know about. I can understand why
19 people would be redeposed or deposed again. And I would just
20 ask the new parties particularly to review the deposition
21 transcripts. And if you -- for instance, Miss Cynthia Hamilton,
22 Ronit Milstein, other people, Mr. Breen -- review the
23 depositions carefully and don't -- try not to go over areas that
24 are already -- that have already been gone over.

25 And I would also ask -- ask the same of -- of course,